



***Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701***

April 23, 2019

Dear Mr. Wardell, Doug Benevento, and Andrew Wheeler;

Prior to the Atlantic Richfield Company, now British Petroleum Company closing the Butte Mines, the Anaconda Smelter, the Berkeley Pit, shutting off the underground mine pumps, and eventually closing the East Continental Pit in 1983 thus ending mining as was known in Butte Montana for over 100 years, Butte Montana was a thriving economically solid community of 65,000 to 70,000 residents. Today we are a community of 34,000 residents struggling to survive and grow.

The proposed decision on Butte Priority Soils Operable Unit by the Butte Silver Bow Local Government, the EPA, the State of Montana and ARCO is a bad decision! Not restoring Butte's portion of Silver Bow Creek to a quality creek where children can fish and play is unconscionable and an irresponsible decision! The decision is the final decision for the Butte Superfund area and it along with the Berkeley Pit and Montana Pole decisions will have forever-negative environmental, economic and social consequences for Butte Montana! Lowering the discharge standards to the Creek is even more unbelievable!

In a publication written in August 2005 called "Cut and Run", written by a reputable group of local Hydrologists and Hydro-Geologists seriously criticizing the proposed 2006 Record of Decision on Butte's Priority Soils that includes Silver Bow Creek flowing through Butte they wrote---*"The U.S. Environmental Protection Agency is prepared to walk away from the nation's largest Superfund site. More precisely, EPA is prepared to allow the responsible party, Atlantic Richfield Company (now British Petroleum/ARCO), to walk away without fully cleaning up the site. As a result, millions of cubic yards of mine tailings, smelting slag and other wastes will drain in perpetuity into the headwaters of the Clark Fork and Columbia Rivers. And the City/County of Butte-Silver Bow will be relegated into an industrial waste heap with dim economic prospects for recovery"*.

Sadly with the new proposed Record of Decision Amendment, I believe the Environmental Protection Agency, State of Montana, Butte Silver Bow Local Government and the Atlantic Richfield/British Petroleum Company are on the verge of accomplishing that outcome!

The 2006 Record of Decision was a bad decision! It was based on totally false and inaccurate information and the new proposed Amendment is a bad decision still based on totally false and inaccurate information.

As I have written numerous times and expressed literally over hundreds of times in public hearing and presentations---Butte just deserves better! This community has contributed significantly to the prosperity of this State and to this Nation. Butte Montana provided the necessary copper and other ores necessary to electrify this country and establish the communication system. Most importantly, we provided the necessary minerals needed to build the material necessary to defend this country during times of war. We have paid our dues---the proposed Amendment is an insult and I am offended by the contents of this proposal.

On March 4, 2019 I wrote to Senator Tester, Senator Daines, Representative Gianforte, Governor Bullock, Attorney General Fox, Acting Administrator Wheeler, Region Eight EPA Administrator Benevento, Butte Silver Bow Council of Commissioners and interested Butte residents---As the political leaders of our State and the Local Government of Butte Silver Bow, in the near future you are going to be asked to accept or reject what I believe will be one of the most, if not the most, important decisions ever made in Butte's History---The final decision on the Superfund cleanup and restoration of Butte known as Butte Priority Soils including the cleanup and restoration of Silver Bow Creek flowing through Butte. I expressed the following concerns with the proposed Amendment in that letter and I believe have not been addressed in this new proposal;

- **#1.---It is a travesty Arco/BP has been taken “off the hook” *for the cleanup and restoration of the Parrott Tailing area and for Silver Bow Creek and its Corridor from Texas Avenue to Casey Street.* It is unconscionable that the State is now using Natural Resource Damage Settlement dollars to remove the Parrott Tailing. It is essential however, that these tailings be removed in order to have a proper cleanup of the Creek and to prevent further contamination to the recently cleaned Silver Bow Creek from Butte to the Warm Springs Ponds.**
- **#2---*The Reverse French Drain installed at the base of the Creek to capture contaminated groundwater flowing to the Creek.*** There is a significant difference between effectiveness of the Drain between the State Natural Resource Damage Program and the EPA and the Atlantic Richfield/British Petroleum Company. The State of Montana is adamant that the drain does not capture the lower area groundwater as believed by the EPA and Arco/BP.
- **#3---*The removal of certain contaminated tailings east of the County Shops and around the Silver Lake Pipeline---***The EPA Arco/BP have refused to accept the removal of contaminated tailings located east of the County Shops in Butte known to Butte residents as Flintstone Park and south of the Silver lake Pipeline located adjacent to Silver Bow Creek where the Drain is located. **Arco/BP and the EPA have threatened the State and Local Government if the removal of these tailings has a negative effect on the Drain.**
- **#4. *The document lowers discharge standards at the Headwaters of the Columbia and Clark Fork River Basins for the discharge of Berkeley Pit water---How crazy if that? As the old adage goes---“The solution to pollution is dilution!”***
- **#5. *Giant retention ponds that I call Zika/mosquito ponds will be installed to deal with storm water run-off from the Butte Hill instead of responsibly cleaning the Hill.***

The new proposal has eliminated Silver Bow Creek and the Silver Bow Creek Corridor from Texas Avenue to Casey Street as part of Butte Priority Soils. How crazy is this? Judge Newman wrote in the Silver Bow Creek Headwaters Coalition successful lawsuit against the State of Montana---*“This litigation seeks to ensure that the State of Montana and its agencies follow the law.”*

“In this case the Plaintiffs stand in the shoes of government. They are seeking as a private attorney general to force the State to act appropriately with respect to the State’s waters held in trust for the public.”

Article IX Section 3 of the Montana Constitution States---**“All waters within the boundaries of the State are the property of the State, held in trust, for the use of its people.”**

Do the “rule of law” and the “Montana Constitution” mean nothing to the Environmental Protection Agency, State of Montana, Local government and the Atlantic Richfield/British Petroleum Company?

In addition, the new proposal for lowering the proposed water discharge standards to Silver Bow Creek is based on the fact as stated in your fact sheet---That it is Technically Impracticable to meet the State discharge standards borders on criminal. **Let me point out that in the 2006 Record of Decision the same claim was made on the removal of the Parrot Tailings. We now know through research by the Montana Bureau of Mines, through requests from the Butte Natural Resource Damage Committee, that claim is totally false!** It is also obvious part of the decision to change the discharge standards includes the fact that water must be brought in from Silver Lake to dilute Berkeley Pit Discharge water being discharged to the Creek---**As the old saying goes---The solution to pollution is dilution!**

As a former Seven Term Montana Legislator, life-long Butte resident actively involved in Butte Superfund issues for well over 35+ years, I wrote on March 1, 2005 on the proposed 2006 Record of Decision on Butte Priority Soils---**“I would like to submit my letter and related information and ask that they be included as my strong opposition to the proposed plan by EPA and ARCO on Butte Priority Soils Operable Unit.”**

Sadly, every ingredient that was necessary to implement a responsible cleanup for the Butte Priority Soils Superfund Area has been articulated many times over to the EPA by myself and other concerned citizens over the past several years. For whatever reason, the EPA has totally ignored this input. **Public input means nothing to the EPA!** They only have public meetings to satisfy the legal requirement of having the meetings.

Everyone knows, including the EPA the State and Arco/BP, using good science that is now available because of research by the Butte Natural Resource Council that was not available prior to the 2006 Record of Decision, what needs to be accomplished to have a responsible cleanup under Superfund law. We deserve a solution that requires a cleanup and restoration that is protective of human health and the environment and the Montana Constitution that protects waters of the State--- No more deals, no more band aids!

Two basic premises were used in making this unsatisfactory and what I call incompetent decision on the cleanup of Silver Bow Creek at its headwaters. #1 it was based on the fact that Silver Bow Creek flowing through Butte was sewer, and #2 it was based on the fact that it was technically impracticable to responsibly clean and restore the Creek and its corridor and to leave contaminated “waste in place”. Both of these premises have now been proven to be totally false and inaccurate!

Please include my comments and letter as part of the official public record concerning the proposed Record of Decision Amendment to Butte Priority Soils Operable Unit. I am also including excerpts of various letters and emails I have written over the years as my strong thoughts and concerns! I will attach the letters and emails when the final consent Decree is issued and request they also become part of the official record.

I write this opposition letter to the proposed Record of Decision Amendment on Butte Priority Soils knowing it is an effort in futility. Knowing the Environmental Anti-Protection Agency has absolutely no intention of making any changes to the proposed document and only requests input to satisfy the legal requirement to do so and appease Judge Hadden. **However, I do so because I want the children of Butte and Montana to know when they are paying to rectify this mess in the years to come, that some folks in the community did in fact care!**

Sincerely;

Fritz Daily